

## **Remarks**

### Introduction

This reply is submitted in response to the outstanding Office Action mailed December 22, 2008. Claims 1, 3, 4 and 6-18 currently stand rejected.

Claims 1, 7, 9, 11-14 and 16-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,253,327 ("Zhang") in view of U.S. Patent No. 6,047,268 ("Bartoli") and further in view of U.S. Patent No. 6,408,336, ("Schneider").

Claims 3, 4, 6, 8 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zhang in view of Bartoli in view of Schneider and in further view of U.S. Patent No. 6,434,619 ("Lim").

Claim 9 has been amended to include the word "the" before "user". Claim 10 is canceled without prejudice.

New claims 19-24 depend from claims 1, 9 or 18 and are fully supported by applicants' originally filed specification (see, for example, page 7, lines 23-27 and page 10, lines 23-24).

Applicants respectfully traverse the rejections. In light of the remarks presented below, applicants respectfully request reconsideration and allowance of all now-pending claims, namely claims 1, 3, 4, 6-9, and 11-24.

### Detailed Summary of Rejections of Independent Claims 1, 9 and 18

Zhang is directed to a single step network logon. The Office Action cites Zhang (at col. 7, lines 12-17) for allegedly disclosing determining if the user is entitled to access the destination network based upon the user profile. But the Examiner acknowledges that Zhang fails to suggest: (1) "a system wherein no special authentication software need be installed on the user's computer to access the destination address" (Office Action, page 4); and (2) "a system wherein the attribute comprises an indication of the location comprising a port, circuit ID, VLAN ID or MAC address from which the request was received that is determined based on the received packet wherein the packet is transmitted from the user's computer" (Office Action, page 5).

Bartoli is directed to “[a] billing methodology that minimizes the steps that need to be performed to obtain authorization and approval for an Internet transaction . . . .” Bartoli, col. 2, lines 19-21. The specific steps that Bartoli seeks to eliminate are those associated with transmitting and cross-referencing IP addresses. See Bartoli, col. 2, lines 1-19. The Examiner alleges there was motivation to combine Bartoli and Zhang, in particular the Examiner says that, “One of ordinary skill in the art would have been motivated to do this because it would reduce the cost of putting up the system since the cost of the special software would.” Office Action, page 5.

The Examiner then admits that Bartoli, like Zhang, also fails to suggest “a system wherein the attribute comprises an indication of the location comprising a port, circuit ID, VLAN ID or MAC address from which the request was received that is determined based on the received packet wherein the packet is transmitted from the user’s computer.” Office Action, page 5.

The Examiner relies on Schneider, at col. 3, lines 3-60, to fill the void left by Zhang and Bartoli. Schneider allegedly suggests “an indication of the location comprising VLAN ID, in the form of an IP address, and a port number” and that the “IP address or processor ID is used to determine whether the user has access to resources[.]” Office Action, page 5.

The Examiner uses motivation to combine Schneider with Bartoli and Zhang. In particular the Examiner says: “One of ordinary skill in the art would have been motivated to do this because mobile devices provide limited control over transmission and mobile devices are becoming more common.” Office Action, page 5.

#### Motivation to Combine Schneider and Bartoli and Zhang is Conclusory

Applicants acknowledge the Supreme Court’s decision in which the Court rejected a rigid application of the “teaching, suggestion or motivation” (TSM) test. *KSR Int’l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 82 USPQ2d (BNA) 1385 (2007). Nonetheless, in *KSR Int’l. Co.*, the Court did state that obviousness often requires determining whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue, and that to facilitate review, this analysis should be made explicit. See *KSR Int’l. Co.*, 127 S.Ct. at 1740–41, 82

USPQ2d (BNA) at 1396. Even further, the Court noted that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, 127 S.Ct. at 1740-41, 82 USPQ2d (BNA) at 1396, *citing In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d (BNA) 1329 (Fed. Cir. 2006) (emphasis added).

As clearly explained by the Supreme Court in *KSR Int’l. Co.*, then, any finding of obviousness should be based on an apparent reason to combine the prior art, and must be supported by more than mere conclusory statements. The Examiner attempts to utilize the rationale of mobile devices providing limited control over transmissions in addition to mobile devices becoming more common to combine Schnieder with Bartoli and Zhang.

But “mobile device” is never mentioned in Schnieder, Bartoli or Zhang. None of the cited documents even consider being implemented by a mobile device, let alone the rationale that mobile devices provide limited control over transmissions. Applicants submit that the motivation provided by the Examiner is not justified by the facts and can be contradicted. Thus, the alleged motivation provided by the Office Action is merely a conclusory statement that has no basis as a rational underpinning for combining Schnieder and Bartoli and Zhang.

For at least this reason, the cited documents fail to render independent claims 1, 9 and 18 unpatentable, because the Examiner has failed to establish a *prima facie* case of obviousness in combining Bartoli, Zhang and Schieder. Thus the rejections of independent claim 1, 9 and 18 should be withdrawn and the claims allowed.

Motivation to Combine Bartoli and Zhang was not Clearly Articulated and is Conclusory

Moreover, the MPEP states: “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” MPEP § 2142 (emphasis added).

Applicants respectfully submit that the motivation for combining Zhang and Bartoli was not clearly articulated. The motivation given was: “One of ordinary skill in the art would have been motivated to do this because it would reduce the cost of putting up the system since the cost

of the special software would.” Applicants respectfully submit that it is not clear as to what “the cost of the special software would” do.

Regardless, there is nothing in Bartoli or Zhang that indicates that anything related to the special software increases “the cost of putting up the system.” There is also nothing that indicates that the “special software” of Zhang even has much of a cost, let alone a cost that creates a problem to be solved by one skilled in the art, or that Bartoli sought to eliminate that cost. (As discussed below, however, Bartoli does seek to eliminate any step associated with transmitting and cross-referencing IP addresses. See Bartoli, col. 2, lines 1-21.) Thus, the cost-related motivation, although not clearly articulated, also seems conclusory.

Accordingly, applicants kindly submit that the Examiner has failed to establish a *prima facie* case of obviousness in combining Bartoli and Zhang. For at least this reason, the rejections of independent claim 1, 9 and 18 should be withdrawn and allowed.

#### Bartoli Teaches Away from Schneider and Applicants’ Independent Claims

Even if the Examiner does not find the above arguments persuasive and believes that a *prima facie* case of obviousness has been established or can be established based on Bartoli, Zhang and Schneider, applicants respectfully submit that Bartoli teaches away from Schneider.

“A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. *In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997).” MPEP § 2144.05.III.

The “prior art must be considered in its entirety, including disclosure that teaches away from the [applicants’] claims.” MPEP § 2145.X.D (citing MPEP §§ 2141.02 and 2143.01). The Examiner’s “proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference.” *Id.*

Independent claims 1, 9 and 18 recite, *inter alia*, determining if the user is entitled to access the destination network based upon both the user profile and the indication of the location comprising a port, circuit ID, VLAN ID or MAC address from which the request was received.

Bartoli explicitly seeks to eliminate any step associated with transmitting and cross-referencing IP addresses. See Bartoli, col. 2, lines 1-21. Despite this, the Examiner combines

Bartoli with Schneider to allegedly show “an indication of the location comprising VLAN ID, in the form of an IP address, and a port number” and using “IP address or processor ID . . . to determine whether the user has access to resources[.]” Office Action, page 6.

Combining Bartoli in such a manner renders Bartoli unsatisfactory for its intended purpose and would change Bartoli’s principle of operation – i.e., eliminating the transmission and cross-referencing of IP addresses. See Bartoli, col. 2, lines 1-24.

For at least this reason, applicants’ independent claims 1, 9 and 18 are patentable over the Bartoli-Schneider-Zhang combination, *even if* there is a non-conclusory motivation to combine the three documents that can be clearly articulated.

#### Reply to Rejections of Dependent Claims 3, 4 and 6-8 and 10-17

For at least the foregoing reasons, independent claims 1, 9 and 18 are patentable and, since claims 3, 4 and 6-8, 11-17, and 19-24 depend from and necessarily include all of the recitations of one of independent claims 1 and 9, the cited documents, whether taken alone or in combination, do not teach or suggest the system and methods of claims 3, 4 and 6-8, 11-17 and 19-24 for at least the same reasons as described above in conjunction with the respective independent claims. (“If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.) Accordingly, it is therefore submitted that the 35 U.S.C. § 103(a) rejections of claims 3, 4 and 6-8 and 11-17 have been overcome and new claims 19-24 are also in condition for allowance.


#### Conclusion

In view of the remarks presented above, applicants submit that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact applicants’ undersigned attorney in order to resolve any remaining issues.

Appl. No.: 09/458,602  
Reply Dated April 22, 2009  
Reply to Office Action mailed December 22, 2008

The papers accompanying this Reply authorize the payment of the necessary fees and petition for an extension of time. In the event that any additional extension of time and/or other fees are necessary to allow consideration of this Reply, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

  
Adam M. Kaplan  
Registration No. 59,109

**Customer No. 826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES  
PATENT & TRADEMARK OFFICE ON April 22, 2009.**